

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

BRANDON L. JONES,	)	Case No. C 16-0247 PSG (PR)
	)	
Plaintiff,	)	<b>ORDER OF DISMISSAL WITH</b>
	)	<b>LEAVE TO AMEND</b>
v.	)	
	)	
OAKLAND POLICE DEPARTMENT, et	)	
al.,	)	
	)	
Defendants.	)	
_____	)	

Brandon L. Jones, a California state prisoner proceeding *pro se*, filed a civil rights complaint pursuant to 42 U.S.C. § 1983.<sup>1</sup> The court has granted leave to proceed in forma pauperis in a separate order. For the reasons stated below, the court dismisses the complaint and gives Jones leave to amend to specify his claims for relief.

**I. DISCUSSION**

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner

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<sup>1</sup> Jones has consented to magistrate judge jurisdiction. *See* Dkt. No. 3.

1 seeks redress from a governmental entity or officer or employee of a governmental entity.<sup>2</sup> In its  
 2 review, the court must identify any cognizable claims and dismiss any claims that are frivolous,  
 3 malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a  
 4 defendant who is immune from such relief.<sup>3</sup> *Pro se* pleadings must, however, be liberally  
 5 construed.<sup>4</sup>

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
 7 (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that  
 8 the alleged deprivation was committed by a person acting under the color of state law.<sup>5</sup>

#### 9 B. Jones' Claims

10 Jones' complaint is difficult to decipher. He briefly describes several events, occurring  
 11 on different dates with different officers from the Oakland Police Department. But, as the  
 12 complaint is currently pled, the court cannot determine exactly what Jones' claims are. In order  
 13 to seek redress under Section 1983, a plaintiff must assert the violation of a federal "right."<sup>6</sup>  
 14 That is, it must be clear from the face of the complaint that there is a federal question.<sup>7</sup> To state  
 15 such a claim, Jones must show a specific constitutional or federal guarantee safeguarding the  
 16 interests that have been invaded.<sup>8</sup> Jones will be given leave to amend to comply with these  
 17 requirements if he can do so in good faith.

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21 <sup>2</sup> See 28 U.S.C. § 1915A(a).

22 <sup>3</sup> See 28 U.S.C. § 1915A(b)(1), (2).

23 <sup>4</sup> See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

24 <sup>5</sup> See *West v. Atkins*, 487 U.S. 42, 48 (1988).

25 <sup>6</sup> See *Golden State Transit Corp. v. Los Angeles*, 493 U.S. 103, 106 (1989).

26 <sup>7</sup> See *Easton v. Crossland Mortgage Corp.*, 114 F.3d 979, 982 (9th Cir. 1997).

27 <sup>8</sup> See *Paul v. Davis*, 424 U.S. 693, 697 (1976).

1 To the extent Jones intended to raise an equal protection claim, he fails to do so. He  
 2 provides facts about several events from when he was not yet incarcerated, and seems to suggest  
 3 that the defendants arrested him instead when they could have arrested others. However, a  
 4 plaintiff alleging denial of equal protection under 42 U.S.C. § 1983 based on race or other  
 5 suspect classification must plead intentional unlawful discrimination or allege facts that are at  
 6 least susceptible of an inference of discriminatory intent.<sup>9</sup> To state a claim for relief, the plaintiff  
 7 must allege that the defendant state actor acted at least in part because of plaintiff's membership  
 8 in a protected class.<sup>10</sup> Proof of a discriminatory intent or purpose is required to show an equal  
 9 protection violation based on race.<sup>11</sup> Jones has not proffered enough facts to "raise a right to  
 10 relief above the speculative level" to support an equal protection claim.<sup>12</sup>

11 In addition, Jones names the Oakland Police Department as a defendant. Local  
 12 governments, such as the Oakland Police Department are "persons" subject to liability under 42  
 13 U.S.C. § 1983 where official policy or custom causes a constitutional tort.<sup>13</sup> However, a city or  
 14 county may not be held vicariously liable for the unconstitutional acts of its employees under the  
 15 theory of respondeat superior.<sup>14</sup> To impose municipal liability under Section 1983 for a violation  
 16 of constitutional rights, a plaintiff must show: (1) that the plaintiff possessed a constitutional  
 17 right of which he or she was deprived; (2) that the municipality had a policy; (3) that this policy  
 18 amounts to deliberate indifference to the plaintiff's constitutional rights; and (4) that the policy is  
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20 <sup>9</sup> See *Monteiro v. Tempe Union High School Dist.*, 158 F.3d 1022, 1026 (9th Cir. 1998).

21 <sup>10</sup> See *Furnace v. Sullivan*, 705 F.3d 1021, 1030 (9th Cir. 2013); *Serrano v. Francis*, 345 F.3d  
 22 1071, 1081-82 (9th Cir. 2003); see also *Byrd v. Maricopa Cnty. Sheriff's Dep't*, 629 F.3d 1135,  
 23 1140 (9th Cir. 2011) (en banc) (claim that alleged harmful treatment but mentioned nothing  
 about disparate treatment was properly dismissed).

24 <sup>11</sup> See *City of Cuyahoga Falls, Ohio v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 193-94  
 25 (2003).

26 <sup>12</sup> *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted).

27 <sup>13</sup> See *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690 (1978).

28 <sup>14</sup> See *Board of Cty. Comm'rs. of Bryan Cty. v. Brown*, 520 U.S. 397, 403 (1997).

1 the moving force behind the constitutional violation.<sup>15</sup> Here, Jones has not alleged sufficient  
 2 facts to state a municipal liability claim against the Oakland Police Department.

3 If Jones can do so in good faith, he may amend his complaint to allege that each  
 4 individual defendant deprived him of a constitutional right. Specifically, Jones must allege facts  
 5 showing that each defendant's actions both actually and proximately caused the deprivation of a  
 6 federally protected right, and what that right is.<sup>16</sup> He should describe what each defendant did  
 7 (or failed to do) that caused a violation of his constitutional rights so that each proposed  
 8 defendant has fair notice of his allegedly wrongful conduct.<sup>17</sup> Even at the pleading stage, "[a]  
 9 plaintiff must allege facts, not simply conclusions, that show that an individual was personally  
 10 involved in the deprivation of his civil rights."<sup>18</sup> Although the federal rules require brevity in  
 11 pleading, a complaint must be sufficient to give the defendants "fair notice" of the claim and the  
 12 "grounds upon which it rests."<sup>19</sup>

13 As the complaint currently reads, Jones has not stated a cognizable claim for relief.  
 14 However, if Jones believes that he can cure the deficiencies addressed above, he may amend his  
 15 complaint to do so.

## 16 II. CONCLUSION

17 The court orders as follows:

18 1. The complaint is DISMISSED with leave to amend. Jones shall file an  
 19 AMENDED COMPLAINT within thirty days from the date this order is filed. The amended  
 20 complaint must include the caption and civil case number used in this order (C 16-0247 PSG  
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22 <sup>15</sup> See *Plumeau v. School Dist. #40 County of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997).

23 <sup>16</sup> See *Lemire v. Cal. Dept. of Corrections & Rehabilitation*, 726 F.3d 1062, 1085 (9th Cir.  
 24 2013).

25 <sup>17</sup> See *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (liability under § 1983 arises only  
 26 upon a showing of personal participation by a defendant).

27 <sup>18</sup> *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

28 <sup>19</sup> *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted).

(PR)) and the words AMENDED COMPLAINT on the first page. Jones may not incorporate material from the prior complaint by reference. Failure to file an amended complaint within thirty days and in accordance with this order will result in a finding that further leave to amend would be futile, and this action will be dismissed.

2. Jones is advised that an amended complaint supersedes the original complaint. “[A] plaintiff waives all causes of action alleged in the original complaint which are not alleged in the amended complaint.”<sup>20</sup> Defendants not named in an amended complaint are no longer defendants.<sup>21</sup>

3. It is Jones’ responsibility to prosecute this case. He must keep the court informed of any change of address by filing a separate paper with the Clerk headed “Notice of Change of Address,” and must comply with the court’s orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

DATED: 3/24/2016

  
PAUL S. GREWAL  
United States Magistrate Judge

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<sup>20</sup> *London v. Coopers & Lybrand*, 644 F.2d 811, 814 (9th Cir. 1981).

<sup>21</sup> *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992).